

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.679 OF 2000

IN

WRIT PETITION NO.1169 OF 2000

...

Omkar Co-operative Housing

Society Ltd.

...Appellant

v/s.

The State of Maharashtra

and ors.

...Respondents

...

Mr.B.M.Kambli i.b S.M.Railkar for the Appellant.

Ms.Alpana Ghone for Respondent No.4.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 5TH SEPTEMBER, 2007

P.C. :

1. By this Appeal the Appellant challenges the order dated 11th July, 2000 passed in Writ Petition No.1169 of 2000 by the learned single Judge of this Court.

2. The learned single Judge has rejected the Writ Petition filed by the Appellant challenging the order passed by the Authorities under the Maharashtra Co-operative Societies Act directing the Petitioner/society to admit the Respondent No.4 as member of the Petitioner/Society. It is common ground that the Appellant/society has filed a civil suit before the Small Causes Court for a decree of eviction against the Respondent No.4. That suit is pending. It is also a common ground that in that suit one of the defences raised by the Respondent No.4 is that he is the owner of the shop premises.

3. In this background, therefore, the learned Counsel appearing for the Respondent No.4, on whose application orders were made by the Authorities under the Maharashtra Co-operative, which were challenged in the writ petition, submits that the Respondent

No.4 should be permitted to withdraw his application dated 16th December, 1998 filed before the society for admitting him to the membership of the society with liberty to make a fresh application for the same purpose, if so advised, after the suit in the Small Causes Court is decided by that court.

4. In our opinion, the request made on behalf of the Respondent No.4 is reasonable and fair. Therefore, we dispose of the Appeal in following terms:

(i) The application dated 16th December, 1998 made by the Respondent No.4 with the Appellant/society for admitting him to the membership of that society is permitted to be withdrawn with liberty to make a fresh application for the same purpose, after the suit in the Small Causes Court which is filed by the Appellant/society is decided.

(ii) As a consequence of the withdrawal of the application, the orders passed by the Authorities on that application as also the orders passed by the learned single Judge of this Court in Writ Petition do not survive rendering this Appeal infructuous.

(iii) It is clarified that the Small Causes Court shall decide the suit pending before it on its merits on the basis of material produced before it without being influenced by the withdrawal of the application for the membership by the Respondent No.4. Similarly, in case the Respondent No.4 makes a fresh application for membership pursuant to the liberty granted, it shall also be considered by the society on its own merits.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2895 OF 2007

IN

APPEAL NO.679 OF 2000

IN

WRIT PETITION NO.1169 OF 2000

...

Omkar Co-operative Housing

Society Ltd.

...Appellant

v/s.

The State of Maharashtra

and ors.

...Respondents

...

Mr.B.M.Kambli i.b S.M.Railkar for the Appellant.

Ms.Alpana Ghone for Respondent No.4.

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CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 5TH SEPTEMBER, 2007

P.C.:

By consent of parties, motion is granted in terms of prayer clauses (a) and (b). Motion disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)